IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 1782 of 2004(K)

PETITIONER:

MRS.ALIYAMMA VARGHESE, PRORPRIETRIX,
ASWATHY INTERNATIONAL, PATHANAMTHITTA.

BY ADV. SRI.E.P.GOVINDAN,
SRI.A.J.ANTONY.

RESPONDENTS:
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1. **INTELLIGENCE OFFICER (EXPORT & IMPORT)**
   OFFICE OF THE DY.COMMISSIONER (INTELLIGENCE),
   COMMERCIAL TAXES, PALARIVATTOM, ERNAKULAM.

2. **DY.COMMISSIOENR, COMMERCIAL TAXES,**
   SALES TAX COMPLEX, THEVARA, ERNAKULAM.

3. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   KERALA AT TRIVANDRUM.

4. **SALES TAX OFFICER, PATHANAMTHITTA.**

5. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY, TAXES DEPARTMENT, GOVT.SECRETARIAT,
   TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. MATHEW GEORGE VADAKKEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.1782/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PENALTY ORDER DT. 06/01/2003 BY THE R.1.

EXT.P.2: COPY OF THE QUARTERLY RETURN DT. 21/01/2001.

EXT.P.3: COPY OF THE ASSESSMENT ORDER DT. 22/10/2002 BY THE R.4.

EXT.P.4: COPY OF THE REVISION ORDER DT. 27/06/2003 PASSED BY THE DY. COMMISSIONER (2ND RESPT.),EKM.

EXT.P.5: COPY OF THE REVISION ORDER DT. 01/11/2003 BY THE R.3.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.1782 of 2004-K

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Dated this the 27th day of July, 2007.

JUDGMENT

On 14-11-2002, notice was issued under Section 45A of the Kerala General Sales Tax Act, 1963, hereinafter referred to as the "Act" on the specific ground that the petitioner - dealer had violated Section 17 of the Act read with Rules 18(1) and 21(7) of the Kerala General Sales Tax Rules, the "Rules", for short, with the sole intention of evading payment of tax legitimately due. The accusation was that the books of accounts maintained by the dealer for the year 2000-01 are not correct and that the purchases referred to in that notice were kept out of the books of accounts and that the dealer failed to file return and to remit tax. Petitioner replied to that notice. This resulted in Ext.P1 penalty order. On revision, Ext.P4 order

has been issued specifically finding that the dealer had accounted for the transactions in the books of accounts and had filed quarterly return for the months of October, November and December, 2000 declaring a taxable turnover conceding the turnovers in question. The revisional authority found that though the returns reflected the transaction, no payment was effected against the tax due for the period as per the return. The revisional authority concluded by finding that the failure of the dealer in not remitting the tax payable on the taxable turnover admitted in the return filed, amounts to violation of the provisions contained in Section 17 of the Act read with Rule 21 of the Rules. The penalty imposed by the original authority was reduced by the revisional authority and confined to Rs.35,000/-.

2. The revisional authority having found that the petitioner had maintained the books of accounts correctly and had declared the taxable turnover properly and the only failure of the dealer was that the tax was not remitted in time,

the accusation against the petitioner is not referable to any of the provisions contained in Section 45A of the Act, though penalty for non-payment of tax could have been specifically taken up under Section 45AA of the Act. However, it is also the finding of the revisional authority that the entire tax due was paid, though belatedly, after service of summons for production of books of accounts, but before any proceedings was initiated for imposing penalty. It is also the admitted situation that the entire interest component due on the belated payment of tax was also paid.

3. The impugned penalty proceedings having been initiated only under Section 45A specifically, no grounds referable to the different clauses under the said section stand against the petitioner after the findings in Ext.P4 revisional order of the Deputy Commissioner.

4. Under the aforesaid circumstances, the imposition of penalty as per the impugned proceedings is not sustainable

in law.

In the result, this writ petition is allowed quashing Exts.P1 and P4. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/